

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HERMAN R. CANTRELL,

Case No. 3:19-cv-00698-MMD-CLB

Plaintiff,

ORDER

v.

ISIDRO BACA, *et al.*,

Defendants.

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. (ECF No. 1-1 (“Complaint”).) On November 19, 2020, the Court issued an order dismissing the Complaint with leave to amend and directed Plaintiff Herman Cantrell to file an amended complaint within 30 days. (ECF No. 6 at 10.) The 30-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. United States Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure

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1 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
2 (affirming dismissal for lack of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the Court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
9 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
14 in filing a pleading ordered by the Court or prosecuting an action. See *Anderson v. Air*
15 *W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring disposition
16 of cases on their merits—is greatly outweighed by the factors in favor of dismissal
17 discussed herein. Finally, a court's warning to a party that his or her failure to obey a
18 court's order will result in dismissal satisfies the "consideration of alternatives"
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
20 at 1424. The Court's order requiring Plaintiff to file an amended complaint within 30 days
21 expressly stated: "It is further ordered that, if Plaintiff fails to file an amended complaint
22 curing the deficiencies of Plaintiff's Eighth Amendment failure to protect claim and
23 Fourteenth Amendment due process administrative segregation claim, this action will be
24 dismissed with prejudice for failure to state a claim." (ECF No. 6 at 10.) Thus, Plaintiff had
25 adequate warning that dismissal would result from Plaintiff's noncompliance with the
26 Court's order to file an amended complaint within 30 days.

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1 It is therefore ordered that this action is dismissed with prejudice based on
2 Plaintiff's failure to file an amended complaint in compliance with this Court's November
3 19, 2020 order and for failure to state a claim.

4 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
5 No. 1) is granted. Plaintiff will not be required to pay an initial installment of the filing fee.
6 Even though this action is dismissed, the full filing fee must still be paid pursuant to 28
7 U.S.C. § 1915(b)(2).

8 It is further ordered that under 28 U.S.C. § 1915, as amended by the Prison
9 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
10 the account of *Herman R. Cantrell*, #81065, to the Clerk of Court of the United States
11 District Court, District of Nevada, 20% of the preceding month's deposits (in months that
12 the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action.
13 The Clerk of Court is directed to send a copy of this order to the Finance Division of the
14 Clerk's Office. The Clerk of Court is further directed to send a copy of this order to the
15 attention of *Chief of Inmate Services for the Nevada Department of Corrections*, P.O. Box
16 7011, Carson City, NV 89702.

17 The Clerk of Court is further directed to enter judgment accordingly and to close
18 this case.

19 DATED THIS 6th Day of January 2021.

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23 MIRANDA M. DU
24 CHIEF UNITED STATES DISTRICT JUDGE
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